

96TH CONGRESS  
1ST SESSION

# H. R. 3468

To amend title 18, United States Code, to provide criminal penalties for unauthorized disclosure of classified information, and for other purposes.

## IN THE HOUSE OF REPRESENTATIVES

APRIL 5, 1979

Mr. BEARD of Tennessee introduced the following bill; which was referred to the Committee on the Judiciary

## A BILL

To amend title 18, United States Code, to provide criminal penalties for unauthorized disclosure of classified information, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 That (a) title 18, United States Code, is amended by insert-  
4 ing immediately after section 799 the following new section:  
5 **§ 800. Disclosure of classified information**

6 “(a)(1) Whoever, being or having been in authorized  
7 possession or control of confidential information or having ob-  
8 tained confidential information as a result of being or having

1 been a Federal public servant, knowingly communicates such  
2 information to a person not authorized to receive it shall be  
3 fined not more than \$5,000 or sentenced to a term of impris-  
4 onment of not more than five years, or both.

5       “(2) Whoever, being or having been in authorized pos-  
6 session or control of secret information or having obtained  
7 secret information as a result of being or having been a Fed-  
8 eral public servant, knowingly communicates such informa-  
9 tion to a person not authorized to receive it shall be fined not  
10 more than \$10,000 or sentenced to a term of imprisonment of  
11 not more than ten years, or both.

12       “(b) A person receiving confidential information or  
13 secret information who is not authorized to receive such in-  
14 formation shall not be subject to prosecution—

15               “(1) for conspiracy to commit an offense described  
16 in subsection (a);

17               “(2) for conduct which, under section 2 of this  
18 title, makes such person punishable as a principal to  
19 the commission of such an offense; or

20               “(3) as an accessory after the fact of the commis-  
21 sion of such an offense.

22       “(c) It is a defense to a prosecution under subsection (a)  
23 that—

1           “(1) at the time of the commission of the offense  
2           with which the defendant is charged there did not  
3           exist—

4           “(A) an entity which (i) had been designated  
5           by the President in an Executive order to be re-  
6           sponsible for insuring that each agency of the  
7           United States maintained as classified only such  
8           information as was properly classified information  
9           and (ii) did not itself have responsibility for desig-  
10          nating information as classified information; and

11          “(B) a procedure established by Executive  
12          order or regulation under which the defendant  
13          could have obtained review by the entity de-  
14          scribed in subparagraph (A) of the continuing ne-  
15          cessity for the designation of the information com-  
16          municated as classified information;

17          “(2)(A) prior to the commission of the offense  
18          with which the defendant is charged, the defendant had  
19          attempted to obtain declassification of the information  
20          communicated and had fully utilized—

21          “(i) any procedures available within the clas-  
22          sifying agency for obtaining review of the continu-  
23          ing necessity for the designation of the informa-  
24          tion communicated as classified information; and

1       “(ii) the procedure prescribed in paragraph  
2       (1)(B); and  
3       “(B) at the time of the commission of the offense  
4       with which the defendant is charged, the information  
5       communicated was not properly classified information;  
6       “(3) prior to the return of the indictment or the  
7       filing of the information charging the defendant with  
8       the commission of an offense under subsection (a), the  
9       head of the classifying agency, the head of the entity  
10      described in paragraph (1)(A), and the Attorney Gener-  
11      al of the United States did not jointly certify to the  
12      court that the information communicated was at the  
13      time of the offense properly classified information;  
14      “(4) prior to the commission of the offense with  
15      which the defendant is charged, there had been official  
16      public disclosure of the information communicated; or  
17      “(5) the information communicated was commu-  
18      nicated only to the Senate or House of Representatives,  
19      to a committee or subcommittee of the Senate or  
20      House of Representatives, or to a joint committee of  
21      the Senate and House of Representatives pursuant to  
22      lawful demand.  
23      “(d) In making a determination as to whether the infor-  
24      mation communicated was properly classified information at  
25      the time of the offense with which the defendant is charged,

1 the court shall determine the matter de novo and may exam-  
2 ine the contents of such information in camera, and the  
3 burden is on the United States to sustain the classification of  
4 such information.

5 “(e) For the purposes of this section, the following defi-  
6 nitions shall apply:

7 “(1) The term ‘agency’ means any executive de-  
8 partment, military department, Government corpora-  
9 tion, Government-controlled corporation, or other es-  
10 tablishment in the executive branch of the Government  
11 (including the Executive Office of the President), or  
12 any independent regulatory agency.

13 “(2) The term ‘authorized’, when used in relation  
14 to the possession, receipt, or control of classified infor-  
15 mation, means with legal authority to have access to,  
16 to possess, to receive, or to control such information.

17 “(3) The term ‘classified information’ means offi-  
18 cial information that is designated, by a person author-  
19 ized by statute, Executive order, or regulation to make  
20 such a designation, as information requiring, in the in-  
21 terest of the national defense or foreign policy of the  
22 United States, a degree of protection against unauthor-  
23 ized disclosure that—

24 “(A) is specified in such designation; and

1           “(B) is a degree of protection against unau-  
2           thorized disclosure authorized by the Executive  
3           order referred to in paragraph (9)(A).

4           “(4) The term ‘classifying agency’—

5           “(A) when used in relation to any classified  
6           information other than classified information de-  
7           scribed in subparagraph (B) or (C), means the  
8           agency in which the classification of such informa-  
9           tion originated;

10          “(B) when used in relation to classified infor-  
11          mation which has been transferred to another  
12          agency by or pursuant to statute or Executive  
13          order in connection with a transfer of functions  
14          and not merely for storage, means the agency re-  
15          ceiving such information; and

16          “(C) when used in relation to classified infor-  
17          mation which originated in an agency no longer in  
18          existence and which was not officially transferred  
19          to another agency, means each agency in posses-  
20          sion of such information.

21          “(5) The term ‘communicate’ means to impart,  
22          transfer, publish, or otherwise make available.

23          “(6) The term ‘confidential information’ means  
24          classified information that is designated as requiring  
25          the lowest degree of protection against unauthorized

1 disclosure that is authorized by the Executive order re-  
2 ferred to in paragraph (9)(A).

3 “(7) The term ‘Federal public servant’ means any  
4 person who is an officer, employee, or consultant of the  
5 United States, a member of the uniformed services of  
6 the United States, a contractor of the United States  
7 Government, or an employee or consultant of a con-  
8 tractor of the United States Government.

9 “(8) The term ‘information’ includes material from  
10 which information may be obtained.

11 “(9) The term ‘properly classified information’  
12 means classified information that—

13 “(A) is specifically authorized under criteria  
14 established by an Executive order to be kept  
15 secret in the interest of national defense or foreign  
16 policy; and

17 “(B) is in fact properly classified pursuant to  
18 such Executive order.

19 “(10) The term ‘secret information’ means classi-  
20 fied information that is designated as requiring a  
21 degree of protection against unauthorized disclosure  
22 other than the degree of protection described in para-  
23 graph (6).”.

1 (b) The table of sections for chapter 37 of title 18,  
2 United States Code, is amended by adding at the end the  
3 following new item:

"800. Disclosure of classified information."

4 SEC. 2. (a) The heading of the first section 798 of title  
5 18, United States Code, is amended to read as follows:

6 "**§798. Disclosure of classified communications informa-**  
7 **tion.**"

8 (b) The item relating to the first section 798 of title 18,  
9 United States Code, in the table of sections for chapter 37 of  
10 such title is amended to read as follows:

"798. Disclosure of classified communications information."